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IN THE

Supreme Court of the United States

October Term, 1967.

No. 528.

MARION J. BERGUIDO, Individually, MARION J. BERGUIDO, ROBERT G. ROWE and WARREN H. WOODRING, Executors of the Estate of CARLOS BERGUIDO, JR., and JUNE BERGUIDO, JOY BERGUIDO, JILL BERGUIDO and CARLOS BERGUIDO, 3rd, by Their Guardian, MARION J. BERGUIDO,

Petitioners,

v.

EASTERN AIRLINES, INCORPORATED,

Respondent.

MOTION FOR CONSOLIDATION.

B. NATHANIEL RICHTER,
SEYMOUR I. TOLL,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 528.

MARION BERGUIDO, ET AL.,

Petitioner,

v.

EASTERN AIR LINES, INC.,

Respondent.

MOTION FOR CONSOLIDATION.

The motion of Marion Berguido, et al., petitioners in the above matter respectfully represents:

1. That they are the petitioners for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit, now docketed and indexed in this Court as No. 528.

2. That her cause of action centers around an action brought in the United States District Court for the Eastern District of Pennsylvania to recover damages for the death of her husband under the Warsaw Convention, 49 Stat. 3000, arising out of the crash of an airplane on which he was a passenger on an international flight.

3. That the most important issues before the Court presented by the Petition for Certiorari filed in this case is the effect of non-compliance by the carrier with Chapter II, Article 3(1), (2) of the Warsaw Convention relating to ticketing. The issue is whether such non-compliance deprives the carrier of the ability to divest itself of the absolute liability imposed by Article 17 since the ticket failed to contain the enumerated data required by Article 3(1) and was printed in very fine small type which rendered it illegible.

4. That there is pending before this Court at this time a Petition for Certiorari directed to the United States Court of Appeals for the Second Circuit, raising the identical questions of law, in which this Court has prior to taking action on the said Petition requested the view of the Solicitor General. The Solicitor General has expressed his views as to such non-compliance in ticketing set forth in the sections of the Convention just adverted to. The said case is *Alitalia, etc. et al. v. Lisi,* docketed and indexed in this Court as case No. 1169. This will mean that the Court will be able to, and we respectfully urge that it should dispose of both cases at one and the same time as they revolve around the exact same issues. The only difference between the cases is that in No. 1169 arising from the Court of Appeals for the Second Circuit the decedent's family prevailed, whereas in the instant case arising out of the Court of Appeals for the Third Circuit that turned on the same question of law, that family did not. Thus a clear conflict exists between the Second and Third Circuits in which case under the authority of *U. S. v. Minker,* 350 U. S. 179, 180 (1956) certiorari should be granted.

WHEREFORE Marion Berguido, et al., petitioners, respectfully request that the two Petitions for Certiorari be consolidated by the Court for the determination of the grant or non-grant of certiorari and/or argument if it be deemed necessary to be held and heard, that they be disposed of at one and the same time so that there may be uniformity of decision and an expedition of the time and work of the Court.

AND SHE WILL EVER PRAY.

Respectfully submitted,

B. NATHANIEL RICHTER,
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Philadelphia, Pennsylvania,
Attorneys for Petitioners.